

nondiscriminatory basis and on terms that are just and reasonable, or it must be provided at a quality level equal to or above some minimum "reasonable" threshold. The experience of CLECs provided in the *Petition* and the initial comments make clear that, to be meaningful, any regulations prescribing OSS access must provide for minimum performance intervals for the various OSS functions in the event an ILEC has not established such functions for itself. Otherwise, an ILEC could use the absence of such standards as a shield against claims that it is violating the requirement of parity. The issuance of minimum performance intervals in the absence of ILEC standards should prompt the ILECs to adopt their own standards.<sup>65</sup>

Similarly, without specific measurement criteria and performance reporting requirements, there will be no way for CLECs to monitor whether they are receiving access to OSS on a reasonable and nondiscriminatory basis. ILECs simply cannot be permitted to evade a reporting requirement. Since the ILEC alone has the information necessary to monitor parity and, where applicable, adherence to minimum performance standards, it is in the interest of both regulators and the public to have a vehicle that readily informs interested parties of ILECs' compliance.<sup>66</sup> The comments of the California and Wisconsin PUCs make plain the importance of measurement criteria not only to enforcement of the Commission's OSS rules, but also to the State PUCs' enforcement of Section 252 contracts.

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<sup>65</sup> Contrary to the fears of TCG, the adoption of minimum performance standards will not lead to rigid, inflexible standards. TCG Comments at 2-3. As competition emerges, ILECs likely will refine and improve their own OSS performance standards to better serve their customers. Through the reporting requirements advocated by LCI and CompTel, CLECs and regulators will be apprised of these improvements, to which they will be entitled to receive nondiscriminatory access. Further, as market conditions change, the reasonableness of the various minimum performance standards will be subject to reapproval. The absence of Commission-articulated minimum performance standards, in contrast, while seemingly providing flexibility, will instead make it unnecessarily difficult for CLECs to obtain access to OSS functions that is reasonable and nondiscriminatory.

<sup>66</sup> See, e.g., ACSI Comments at 7-8.

**D. The *Petition* Acknowledges Legitimate Distinctions Among Carriers and Avoids Advocating a One-Size-Fits-All Solution**

A number of commenters complain that the *Petition* seeks a single OSS solution for all carriers.<sup>67</sup> This represents a distortion of what LCI and CompTel seek. As noted earlier, consistent with the requirements of Section 252(a), ILECs and CLECs will remain free to negotiate OSS arrangements without reference to Section 251(c) requirements. Moreover, the initial step requested by the *Petition* is for each ILEC to disclose its own OSS performance standards, as a basis for measuring *minimum* performance or parity requirements. Accordingly, ILECs with standards exceeding properly prescribed minimums would be free to retain their different OSS criteria. Further, pursuant to Section 251(f), rural and smaller carriers may be exempt from Section 251(c), which, by implication, includes an exemption from any OSS requirements sought by CompTel and LCI.

As explained in the initial comments of both CompTel and LCI, it may be appropriate for new competitors to access OSS through several different interfaces, including manual intervention, EDI, and electronic bonding.<sup>68</sup> In this way, carriers can select their method of access, among a small, definite number of choices, consistent with their business plans. This could allow a smaller carrier, for example, to choose to focus on building its networks and customer base before its electronic interface.<sup>69</sup>

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<sup>67</sup> See, e.g., Aliant Comments at 2.

<sup>68</sup> See CompTel Comments at 7; LCI Comments at 7-8.

<sup>69</sup> See Time Warner Comments at 6. As CompTel stated in its comments, any deviation from strict parity allowed because a CLEC chooses a lesser form of access, e.g., manual intervention, must be precisely defined to ensure that CLEC still receives the benefits of Sections 251(c)(3) and(c)(4). CompTel Comments at 7-8.

Comptel also believes that the adoption of reasonable, but short and strict, transition periods for ILECs to bring OSS performance into compliance with minimum standards and access methods into compliance with uniform technical standards would be appropriate. Depending upon the record developed in the requested rulemaking, it may be appropriate for the Commission to adopt a more extended transition for rural carriers and other ILECs with fewer than two percent of the subscriber lines in the United States. As indicated earlier, Section 251 does not provide a basis for distinguishing among ILECs that have not received an exemption from Section 251(c) under Section 251(f).<sup>70</sup> Nonetheless, once minimum default performance intervals, measurement criteria, reporting requirements and technical standards are established, a more generous transition period may be considered for such carriers. The Commission might take into account, for example, the period of time it would take to process a qualifying ILEC's request for suspension or modification under Section 251(f)(2).<sup>71</sup> Such an extended transition, if supported, would address the concerns of the ITTA.<sup>72</sup> By the same token, because ITTA members are free to seek suspension or modification of any 251(c) requirement, there is no need for the Commission to adopt different OSS requirements for carriers serving less than two percent of the nation's lines.

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<sup>70</sup> *See supra* note 29.

<sup>71</sup> 47 U.S.C. § 251(f)(2).

<sup>72</sup> *See* ITTA Comments at 16-18.

**V. CONCLUSION**

For the foregoing reasons, and those contained in CompTel's initial comments, the Commission should grant the *Petition* on an expedited basis.

Respectfully submitted,

Genevieve Morelli  
Executive Vice President  
and General Counsel  
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION  
1900 M Street, N.W., Suite 800  
Washington, D.C. 20036  
(202)296-6650

By: 

Robert J. Aamoth  
Edward A. Yorkgitis, Jr.  
Peter Batacan  
KELLEY DRYE & WARREN LLP  
1200 19th Street, N.W.  
Suite 500  
Washington, D.C. 20037  
(202) 955-9600

Its Attorneys

July 30, 1997

## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing **Reply Comments of the Competitive Telecommunications Association** were hand-delivered this 30th day of July, 1997, to the following:

Janice M. Myles  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, DC 20554

International Transcription Service  
2100 M Street, N.W., Room 140  
Washington, DC 20037

Regina M. Keeney, Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, DC 20554

James L. Casserly  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, DC 20554

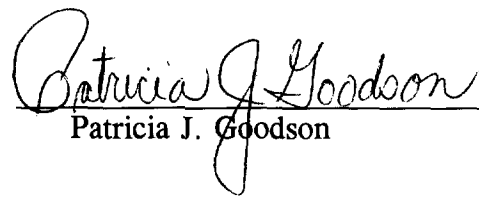
Kathy Franco  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, DC 20554

Paul Gallant  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, DC 20554

John Nakahata  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, DC 20554

Richard Welch  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, DC 20554

Richard Metzger  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, DC 20554

  
Patricia J. Goodson